

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

ANGELA SANTIAGO,

Plaintiff,

v.

GEICO ADVANTAGE INSURANCE  
COMPANY,

Defendant.

CASE NO. C22-1370RSL

ORDER GRANTING  
PLAINTIFF’S MOTION FOR  
SUMMARY JUDGMENT

This matter comes before the Court on plaintiff Angela Santiago’s “Motion for Partial Summary Judgment on Contract Claim.” Dkt. # 57. Plaintiff sued her insurer alleging claims of breach of contract, breach of the duty to act in good faith, and violations of the Insurance Fair Conduct Act (“IFCA”) and the Washington Consumer Protection Act (“CPA”). Plaintiff seeks a summary determination that she is entitled to recover \$76,142.08 under her underinsured motorist (“UIM”) coverage, which is the outstanding balance on an arbitration award she obtained against the underinsured tortfeasor.

Summary judgment is appropriate when, viewing the facts in the light most

1 favorable to the nonmoving party, there is no genuine issue of material fact that would  
2 preclude the entry of judgment as a matter of law. The party seeking summary dismissal  
3 of the case “bears the initial responsibility of informing the district court of the basis for  
4 its motion” (*Celotex Corp. v. Catrett*, 477 U.S. 317, 323 (1986)) and “citing to particular  
5 parts of materials in the record” that show the absence of a genuine issue of material fact  
6 (Fed. R. Civ. P. 56(c)). Once the moving party has satisfied its burden, it is entitled to  
7 summary judgment if the non-moving party fails to designate “specific facts showing that  
8 there is a genuine issue for trial.” *Celotex Corp.*, 477 U.S. at 324. The Court will “view  
9 the evidence in the light most favorable to the nonmoving party . . . and draw all  
10 reasonable inferences in that party’s favor.” *Colony Cove Props., LLC v. City of Carson*,  
11 888 F.3d 445, 450 (9th Cir. 2018). Although the Court must reserve for the trier of fact  
12 genuine issues regarding credibility, the weight of the evidence, and legitimate  
13 inferences, the “mere existence of a scintilla of evidence in support of the non-moving  
14 party’s position will be insufficient” to avoid judgment. *City of Pomona v. SQM N. Am.*  
15 *Corp.*, 750 F.3d 1036, 1049 (9th Cir. 2014); *Anderson v. Liberty Lobby, Inc.*, 477 U.S.  
16 242, 252 (1986). Factual disputes whose resolution would not affect the outcome of the  
17 suit are irrelevant to the consideration of a motion for summary judgment. *S. Cal. Darts*  
18 *Ass’n v. Zaffina*, 762 F.3d 921, 925 (9th Cir. 2014). In other words, summary judgment  
19 should be granted where the nonmoving party fails to offer evidence from which a  
20 reasonable fact finder could return a verdict in its favor. *Singh v. Am. Honda Fin. Corp.*,  
21 925 F.3d 1053, 1071 (9th Cir. 2019).

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2 Having reviewed the memoranda, declarations, and exhibits submitted by the  
3 parties and taking the evidence in the light most favorable to defendant, the Court finds as  
4 follows:

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6 **I. BACKGROUND**

7 Plaintiff was injured in a car accident caused by the negligence of Latisha Allen.  
8 Plaintiff filed a lawsuit against Allen in July 2021. Allen was insured by GEICO General  
9 Insurance Company (“GEICO General”) with a liability policy limit of \$25,000. GEICO  
10 General defended the lawsuit on Allen’s behalf, and plaintiff put her own insurer,  
11 defendant GEICO Advantage Insurance Company (“GEICO”), on notice that she may be  
12 making a claim for UIM benefits. The lawsuit proceeded to arbitration. Defendant did not  
13 intervene, leaving the defense of the case to GEICO General. Plaintiff obtained an  
14 arbitration award in the amount of \$101,142.08. Allen filed a request for a trial *de novo*  
15 but settled the dispute before trial. GEICO General paid plaintiff its policy limit of  
16 \$25,000.

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19 On May 9, 2022, plaintiff requested that defendant pay the balance of the  
20 arbitration award, which was \$76,142.08, under her UIM coverage. GEICO declined,  
21 asserting that Allen’s request for a trial *de novo* negated the arbitration award and  
22 requesting information and documents regarding the accident and the claimed damages.  
23 GEICO ultimately determined that plaintiff had been fully compensated by GEICO  
24 General’s payment of \$25,000 and denied her claim for UIM benefits. Plaintiff argues  
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1 that GEICO is barred from challenging the arbitrator's calculation of damages because it  
2 declined to participate in the arbitration and/or settlement when given the chance, that the  
3 failure to pay was a breach of contract, and that she is entitled to an award of attorney's  
4 fees under *Olympic S.S. Co. v. Centennial Ins. Co.*, 117 Wn.2d 37 (1991).

## 5 **II. DISCUSSION**

6  
7 Plaintiff's UIM policy provided coverage in the amount of \$100,000 to "pay  
8 damages an insured is legally entitled to recover from the owner or operator of an  
9 underinsured motor vehicle due to[] bodily injury sustained by that insured and caused by  
10 an accident." Dkt. # 58-1 at 24. GEICO argues that plaintiff is not "legally entitled to  
11 recover" the arbitration award from Allen because Allen requested a trial *de novo* and the  
12 arbitral award was never reduced to a final judgment.<sup>1</sup> The Court has already determined  
13 that the arbitration award does not constitute a final judgment. Dkt. # 76 at 10. But that  
14 finding does not resolve plaintiff's claims. Plaintiff argues (a) that a final, enforceable  
15 judgment is not necessary to establish the amount to which she is legally entitled for  
16 purposes of the UIM coverage provision, (b) that Washington law forbids an insurer from  
17 forcing its insured to relitigate a claim in the hope of obtaining a more favorable result,  
18 and (c) that the arbitration award therefore establishes the amount plaintiff is legally  
19 entitled to recover.  
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23 An insurance policy is a contract. RCW 48.01.040. A claim against the  
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25 <sup>1</sup> For the reasons stated in the "Order Granting in Part Defendant's Motion for Summary  
26 Judgment," Dkt. # 76 at 9-10, the Court rejects GEICO's argument that a request for trial *de novo* made the arbitration a nullity.

1 insurance company for underinsured motorist coverage is an action on the  
2 policy that sounds in contract, although an underlying tortious injury is also  
3 involved, which affects the contract claim. *Girtz v. N.H. Ins. Co.*, 65 Wn.  
4 App. 419, 422–23 (1992). We apply contract law to interpret the insurance  
5 policy, mindful that the insured’s right to underinsured motorist benefits  
6 hinges on the existence of a tort cause of action against the underinsured  
7 motorist. *E.g.*, *Daley v. Allstate Ins. Co.*, 135 Wn.2d 777, 783–85 (1998);  
8 *Keenan v. Indus. Indem. Ins. Co. of N.W.*, 108 Wn.2d 314, 321 (1987). The  
9 relationship of the UIM insurer and insured is contractual, but the  
10 obligation to offer UIM coverage is statutory. *Fisher v. Allstate Ins. Co.*,  
11 136 Wn.2d 240, 245 (1998). Washington’s underinsured motorist statute  
12 requires UIM insurance to be “provided ... for the protection of persons  
13 insured thereunder who are legally entitled to recover damages from  
14 owners or operators of underinsured motor vehicles.” RCW 48.22.030(2).  
15 UIM insurers cannot reduce statutorily mandated UIM coverage through  
16 language in the insurance policy. *Liberty Mut. Ins. Co. v. Tripp*, 144 Wn.2d  
17 1, 12 (2001) (citing *Britton v. Safeco Ins. Co. of Am.*, 104 Wn.2d 518, 531  
18 (1985)). “The UIM statute is ‘liberally construed in order to provide  
19 broad protection against financially irresponsible motorists.’ ” *Diaz v.*  
*Nat’l Car Rental Sys., Inc.*, 143 Wn.2d 57, 61 (2001) (quoting *Clements v.*  
*Travelers Indem. Co.*, 121 Wn.2d 243, 251 (1993) (quoting *Kenworthy v.*  
*Pa. Gen. Ins. Co.*, 113 Wn.2d 309, 313 (1989))). Consequently, in  
Washington, we consider contract principles, public policy, and legislative  
intent when deciding UIM cases. *E.g.*, *Allstate Ins. Co. v. Ostenson*, 105  
Wn.2d 244, 247–48 (1986); *Sayan v. United Servs. Auto. Ass’n*, 43 Wn.  
App. 148, 153 (1986).

20 *McIllwain v. State Farm Mut. Auto. Ins. Co.*, 133 Wn. App. 439, 445-46 (2006). *See also*  
21 *Fisher v. Allstate Ins. Co.*, 136 Wn.2d 240, 244-45 (1998). The “legally entitled to  
22 recover damages” requirement is satisfied where an action against the tortfeasor would  
23 have been successful – *i.e.*, where the UIM insured *could* have proven the elements of a  
24 tort claim and overcome any available defenses – even if the insured has not sued the  
25 tortfeasor, proven fault in a court action, and/or obtained a judgment. *Elovich v.*  
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1 *Nationwide Ins. Co.*, 104 Wn.2d 543, 550–52 (1985); *McIllwain*, 133 Wn. App. at 446-  
2 47. Thus, the fact that plaintiff did not pursue her lawsuit against Allen to judgment,  
3 instead settling for payment of the full benefits offered under Allen’s inadequate liability  
4 policy, does not preclude a claim for UIM benefits from GEICO or limit the evidence of  
5 damages she may present in support of such a claim.<sup>2</sup>  
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7 The question, then, is whether GEICO is bound by the arbitration award. In  
8 *Fisher*, the Washington Supreme Court held that when an insured with UIM coverage  
9 files an action against the tortfeasor, the insurer is bound by the results of the action if the  
10 insurer had notice and an opportunity to participate. 136 Wn.2d at 242. In reaffirming  
11 what has become known as the *Finney-Fisher* rule, the Supreme Court explained how the  
12 rule “straightforwardly” resolves a multitude of policy issues and concerns that arise in  
13 the UIM context.  
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15 From the UIM carrier’s point of view, there is concern about collusion  
16 between its insured and the tortfeasor, who may be judgment proof and  
17 have no real interest in the outcome of an arbitration or trial, leading to an  
18 artificially high award for the insured the carrier must pay. Another  
19 possibility is the tortfeasor might have minimal insurance coverage, thus  
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21 <sup>2</sup> In *Fisher*, the insured had obtained an arbitration award in her favor but did not reduce the  
22 award to a final judgment. 136 Wn.2d at 243. Because the insurer raised the issue for the first  
23 time in its petition for appellate review, the Washington Supreme Court declined to consider it,  
24 but noted that “authority exists for not requiring an arbitration award to be reduced to judgment.”  
25 *Id.* at 252 n.6 (citing Restatement (Second) of Judgments §§ 13, 84 (1982) (suggesting a final  
26 arbitration award without a court judgment will suffice for collateral estoppel purposes)); *Finney*  
*v. Farmers Ins. Co.*, 21 Wn. App. 601 (following the majority rule which relies on collateral  
estoppel principles, but does not apply the doctrine’s elements strictly); *Boyd v. Davis*, 127  
Wn.2d 256, 262–63 (1995) (arbitral awards will not be modified by the court unless an error of  
law is shown); *Landmark v. Mader Agency, Inc.*, 126 Idaho 74 (1994) (declining to modify  
arbitral award for factual errors.)).

1 lessening the incentive for the tortfeasor's insurance company to defend the  
2 action vigorously, again possibly leading to an artificially high award.  
3 These are legitimate concerns.

4 From the insured's point of view, the insured should not have to relitigate a  
5 case depending on the whim of the UIM carrier. If, for instance, the  
6 outcome of litigation between the insured and the tortfeasor is a small  
7 award, the UIM carrier may decide simply to pay its insured rather than  
8 require a subsequent civil action or arbitration between it and its insured.  
9 On the other hand, if the outcome is a high award, the carrier may decide to  
10 force its insured to relitigate in the hope of obtaining a more favorable  
11 result. *Fisher*, 136 Wn.2d at 249.

12 The *Finney-Fisher* rule straightforwardly resolves all of these concerns.  
13 Giving the UIM carrier timely notice of litigation between the insured and  
14 the tortfeasor, and the attendant opportunity to intervene, allows the carrier  
15 to protect its interests against a collusive or otherwise artificially excessive  
16 result from that litigation. The insured is not forced to endure multiple  
17 actions to secure proper recompense for its UIM coverage.

18 *Lenzi v. Redland Ins. Co.*, 140 Wn 2d 267, 274–75 (2000) (footnote omitted).

19 Defendant was given timely notice of plaintiff's lawsuit against Allen and had  
20 every opportunity to participate and protect its interests. It chose instead to leave the  
21 defense of the litigation to its sister company, GEICO General. Now, unhappy with the  
22 arbitrator's award, GEICO seeks to compel plaintiff to relitigate the calculation of  
23 damages, arguing that collateral estoppel does not apply because the arbitral award was  
24 not reduced to a final judgment. There are two problems with this argument. First, the  
25 *Finney-Fisher* rule is not based on "a strict collateral estoppel approach," but is rather  
26 animated by policy considerations that are unique to the UIM context, particularly  
"“[c]onsiderations of fairness and the avoidance of redundant litigation[,]’ the prevention

1 of ‘anomalous results,’ and ‘preventing insurers from picking and choosing their  
2 judgments’ . . . .” *Lenzi*, 140 Wn.2d at 279-80 (quoting *Fisher*, 136 Wn.2d at 248). All of  
3 these factors favor binding GEICO to the arbitration award in this case, and the insurer  
4 offers no policy-based arguments in rebuttal. Second, the fact that there was no “final  
5 judgment on the merits” for purposes of a strict collateral estoppel analysis is the result of  
6 the procedural and timing choices of the various GEICO entities involved. Allen,  
7 defended by GEICO General, filed a request for trial *de novo*, thereby preventing plaintiff  
8 from reducing the arbitration award to judgment. Almost immediately thereafter, counsel  
9 for GEICO in this case substituted in as counsel for Allen and negotiated a settlement  
10 involving payment of the GEICO General policy limits without releasing the UIM claims  
11 against GEICO. The trial *de novo* therefore never occurred. Not only is strict application  
12 of the collateral estoppel elements unnecessary under Washington law (as discussed  
13 above), but, in the circumstances presented here, allowing GEICO to relitigate damages  
14 because its sister company (and its own counsel) effectively prevented entry of a final  
15 judgment on the merits would be unfair to its insured and would risk anomalous results.  
16 The policy considerations surrounding UIM coverage do not support GEICO’s position.  
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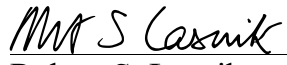
21 The Court finds that the arbitrator’s determination of the damages issue is  
22 “sufficiently firm to be accorded conclusive effect,” Restatement (Second) of Judgments  
23 § 13 (1981), and that the *Finney-Fisher* rule binds GEICO to the award.  
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1 **III. CONCLUSION**

2 For the foregoing reasons, plaintiff's motion for summary judgment on her  
3 contract claim (Dkt. # 57) is GRANTED. Plaintiff is contractually entitled to \$76,142.09  
4 and is entitled to an award of attorney's fees under *Olympic S.S. Co. v. Centennial Ins.*  
5 *Co.*, 117 Wn.2d 37 (1991).  
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8 Dated this 18th day of December, 2023.  
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11 Robert S. Lasnik  
12 United States District Judge  
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